**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 982 of 2007**
**With**
**CRIMINAL MISC.APPLICATION No. 6842 of 2007**
**With**
**SPECIAL CRIMINAL APPLICATION No. 983 of 2007**
**With**
**CRIMINAL MISC.APPLICATION No. 6846 of 2007**
**With**
**SPECIAL CRIMINAL APPLICATION No. 974 of 2007**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**AMIT VISHNUPRASAD GAJJAR - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 9 - Respondent(s)**

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**Appearance :**

MR MANOJ N POPAT for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 7, 9,
MR MANISH J PATEL for Respondent(s) : 4,
MS AMEE YAJNIK for Respondent(s) : 5 - 6.
MR BHUNESH C RUPERA for Respondent(s) : 8,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 09/07/2007**

**COMMON ORAL JUDGMENT**

1. As common question of law and facts arise in this group of petitions / applications and they are arising out of the common judgment and order passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad passed in Criminal Revision Application No.176 of 2007, this group of petitions / applications are being disposed of by this common judgment and order.

2. Special Criminal Application No.982 of 2007 is filed by the applicant – original accused No.3 challenging the judgment and order passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad dated 30th April, 2007 passed in Criminal Revision Application No.176 of 2007 in allowing the said Criminal Revision Application partly by which the learned Additional City Sessions Judge has remanded the applicant – original accused No.3 for 3 days police custody.

Special Criminal Application No. 983 of 2007 is filed by the applicant – original accused No. 1 challenging the judgment and order passed by the learned Additional City Sessions Judge, Court No. 10, Ahmedabad dated 30th April, 2007 passed in Criminal Revision Application No.176 of 2007 by which the learned Judge has directed that he should remain present before the Investigating Officer from Morning 9.00 AM to Evening 6.00 PM for 2 days i.e. on 1.5.2007 and 2.5.2007 for interrogation.

Special Criminal Application No. 974/2007 is filed by the applicant – original complainant challenging the judgment and order passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad dated 30th April, 2007 passed in Criminal Revision Application No. 176 of 2007 in refusing to grant the remand for 7 days and granting 3 days remand only against the orig. accused

No.3.

Criminal Misc. Application Nos.6842 of 2007 and 6846 of 2007 are filed by the applicants – original claimants for jointing them as party respondents in Special Criminal Application Nos.982 of 2007 and 983 of 2007 respectively.

3. The facts giving rise to th present Special Criminal Applications and Criminal Misc. Applications as well as Criminal Revision Application, are as under :-

3.1 One Bhavanbhai Nathubhai Desai (hereinafter referred to as “the complainant” for short) had filed complaint on 17.10.2006 in the Court of learned Chief Metropolitan Magistrate, Court No.13, Ahmedabad against the respective petitioners and other accused for the offences punishable under Section 141, 147, 149, 383, 395, 397, 440, 452,

506(2) and 120(B) of the I.P.C. r.w. Section 25(C) of the Arms Act. In the said complaint it has been averred / alleged as under:-

3.2 There was Natraj Cinema situated on the Ashram Road, Ahmedabad and “Dairy Den” became a tenant of Natraj Cinema and one Shri Harishbhai Fulchandbhai Shah is the owner of the said “Dairy Den.” The complainant is working as Security Officer of Devanshi Enterprise who is looking after security of the said “Dairy Den.”

3.3 He has stated that he was present on his duties at 6 O'clock in the morning on 8.10.2006. At that time accused Nos. 1 to 9 i.e. namely, (1) Yogendra Ratilal Patel, (2) Pragnesh Hariprasad Parikh, (3) Amit Gajjar (4) Saurabh Desai, (5) Ashok Mistry, (6) Arvind Mistry (7) Chetan @ Gai (8) Snehal Hariprasad Parikh (9) Kokilaben Bhanusinhji Desai came with about 30 to 40 persons to the parlour of Dairy Den and two persons

placed a revolver on his forehead and dragged him to the backside of Natraj Cinema towards a temple. They told him that if the complainant made a slightest noise, they would kill him. The accused had started demolishing Ice Cream Parlour of the Company. At that time the complainant informed accused No. 3 Amitbhai Gajjar that let him inform to the persons of the Company. Accused Nos. 1 and 2 informed him to keep mum and did not allow him to telephone. The other person namely Pankajbhai came at about 8 O'clock and he was also confined with the complainant.

3.4 Thereafter, Shri Pankajbhai and the complainant were freed at about 11 O'clock and Shri Pankajbhai and the complainant went to the parlour and saw that the furniture of the parlour, Ice Cream Machine, Freeze, Computer, Cash box and other articles with cash amount of Rs. 40,000/- were looted and damage was done. Thereafter, both of them informed their manager Shri Kaushikbhai. He

immediately reached the parlour. Then he took them to the factory at Kochrab-Paldi. When they reached there, their security officer Bharatsinh told that some unknown persons came with a truck and told that Kaushikbhai had sent them and they threw counter, table, freeze and other articles and ran away with the truck (with all goods).

3.5 Thereafter, the complainant filed complaint in writing on 8.10.2006 to Navrangpura Police Station. The Police Station Officer accepted the same but the police has not taken any cognizance. No investigation was made and an offence was also not registered. The police did not respond properly and therefore the complainant was required to file complaint before the learned Chief Metropolitan Magistrate on 17.10.2006.

3.6 It was further stated therein that all these accused along with 30 to 40 persons

rushed at their parlance. They arranged a pre-planned conspiracy by an unlawful assembly and looted the furniture and cash of parlour and thereby committed an offence. It was further alleged that accused in this case are rich persons and have political influence. They informed the master of the complainant that "you can do nothing to us. Police or Court would not do any damage to us". In view of the same, the present complaint has been filed with request to assign the complaint to the Crime Branch.

4. The learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad, after going through the complaint by his order dated 17.10.2006, held that, considering the complaint of the complainant, the accused have committed a serious offence and flouted the orders of the Civil Court and therefore it is necessary to make investigation of the offence. As it is not possible to initiate an inquiry by a Court, it is necessary to send

this complaint to the police so that lawful action can be taken by making just investigation. Considering all these facts and circumstances and also considering an impartial and just police investigation is necessary in this matter, the learned Chief Metropolitan Magistrate passed the following order:

> ***"The complaint be sent to P.I. (Senior), Navrangpura, for investigation under Section 156(3) of the Cr.P.C. The P.I. (Senior) himself shall make an inquiry and report to this Court within 5 days".***

5. It was the case on behalf of the complainant that as the accused were rich and influential persons, nothing happened and there was no investigation carried out by the Police Inspector, Navrangpura Police Station, the complainant preferred Special Criminal Application No.299 of 2007 before this Court

on 15.2.2007 for an appropriate order directing the State Government to hand over the investigation of M Case No. 1 of 2006 registered with Navrangpura Police Station to the D.I.G., State of Gujarat or to C.I.D (Crime), City of Ahmedabad or in the alternative to hand it over to the C.B.I., and to make further investigation of the case in accordance with law. In a the said application, the learned Single Judge of this Court (Coram: K.S.Jhaveri, J.) was pleased to pass the following order on 22.3.2007.

***"In the meantime, CID (Crime), State of Gujarat will carry out investigation, in connection with M. Case No. 1/06 registered with the Navrangpura Police Station and will submit a detailed report thereof before this Court within a period of ninety days from the date of receipt of the writ of this Court. It is clarified that this order is passed by consensus and the parties have not invited reasons. Direct service is***

***permitted.***"

6. Pursuant to the order passed by this Court, the C.I.D. (Crime) took over the investigation and started investigating the complaint and during the course of the investigation, C.I.D. (Crime) thought it fit that custodial interrogation of the petitioners of Special Criminal Application Nos.982 of 2007 and 983 of 2007 has required for 7 days for the purpose of further and complete investigation and therefore, C.I.D. (Crime) filed remand application on 5.4.2007 before the learned Chief Metropolitan Magistrate, Ahmedabad. In the said application, it was further stated that they have filed an application for anticipatory bail before this Court and this Court while granting the anticipatory bail by order dated 8.3.2007 in paragraph – 4 of the said order it was specifically observed that it would open to the Investigating Officer to file an application for remand, if he considers it proper and just, and the concerned Magistrate

would decide it on merits.

7. Pursuant to the alleged order, the CID (Crime) filed application for remand of the accused. It was stated that in this case large amount of goods have been taken away by the accused which have been stated on pages 4 and 5 of the application and large muddamal is required to be recovered. Even the offence has been taken at whose instance, that also has to be considered. It was further stated that after committing the offence, all the accused are absconding and therefore they have decided to investigation particularly in view of the order passed by this Court. In the said application it was stated that when the investigation was carried out all the accused have not given correct information. It was further stated that they have to recover large amount of goods. They have to also inquire as to at whose instance the aforesaid incident dated 8.10.2006 took place. The accused have taken

goods in which vehicle and what is the number of vehicle and where they have hidden the muddamal and thereafter they have to recover the goods which have been stolen by the accused. In view of the same, they have to get the police custody and custodial interrogation of the accused and investigate the offence. It was further stated that after the incident all the accused are absconding and where they have stayed, that is to be inquired. Therefore the present accused, namely, Pragneshbhai Hariprasad Parikh as well as other accused viz. Amitkumar Vishnuprasad Gajjar are required to be interrogated. Hence the CID Crime prayed for 7 days remand of both the accused.

8. The learned Chief Metropolitan Magistrate, Court No.13, Ahmedabad by his order dated 5.4.2007 rejected the said remand application, however, directed that for 3 days from 7.4.2007 to applicant herein – original accused Nos.2 and 3 i.e.

Pragneshbhai Hariprasad Parikh and Amitkumar Vishnuprasad Gajjar, shall remain present before the Investigating Officer at 5.30 PM for interrogation and they will cooperate with the investigation.

9. Being aggrieved and dissatisfied with the aforesaid order dated 5.4.2007 passed by the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad in rejecting the application for remand and custodial interrogation and police custody of the accused Nos.2 and 3, the State filed Criminal Revision Application No. 176 of 2007 before the learned Sessions Judge, Ahmedabad. It was the contention on behalf of the State that as the allegations against the accused are very serious, a detail investigation is necessary against the accused and it was the duty of the learned Magistrate to inquire as to whether the offences under Sections 395 and 397 of the Act have taken place or not. It was also contended on behalf of the State

that not granting the remand of the accused is a final order so far as the State / Investigating Officer is Concerned and therefore, the Criminal Revision Application under Section 397 of the Criminal Procedure Code was maintainable. That the learned Additional City Sessions Judge, Court No.10, Ahmedabad by his order dated 30th April, 2007 partly allowed the said Criminal Revision Application by observing that the lower Court has not considered the allegations for the offences under Sections 395 and 397 of the I.P.C. and the allegations are that the accused have taken goods worth Rs.44 Lacs and they have come with 30 to 40 people who have committed the offence and at whose instance the offence has been committed and the building has been demolished is required to be investigated. The learned Revisional Court also observed that as per the report of the C.I.D. (Crime) some of the accused are arrested and some of the accused are still absconding and ultimately, the learned

Additional City Sessions Judge allowed the said Criminal Revision Application in part by quashing and setting aside the order passed by the learned Chief Metropolitan Magistrate refusing to grant the remand of the accused and directed that the original accused No.2 (applicant of Special Criminal Application No. 983 of 2007) should remain present before the Investigating Officer from Morning 9.00 AM to 6.00 PM on 1.5.2007 and 2.5.2007 for interrogation. The learned Additional City Sessions Judge also granted 2 days remand of accused No.3 (applicant of Special Criminal Application No. 982 of 2007).

10. Being aggrieved and dissatisfied with the order passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad dated 30th April, 2007 passed in Criminal Revision Application No. 176 of 2007, the petitioners preferred Criminal Revision Application Nos. 236 of 2007 and 237 of 2007, which came up for hearing before the

learned Single Judge of this Court (Coram: K.M.Mehta, J.), who by his order dated 14.5.2007 dismissed the said Criminal Revision Applications by holding that the order granting the remand of the accused is interlocutory order and therefore, the Criminal Revision Applications under Section 397 of the Code against the said order are not maintainable. Under the circumstances, both the accused, Nos.2 and 3 have preferred present Special Criminal Application Nos.982 of 2007 and 983 of 2007 under Article 227 of the Constitution of India challenging the judgment and order passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad dated 30th April, 2007 passed in Criminal Revision Application No. 176 of 2007.

11. Shri N.D.Nanavati, learned Senior Advocate appearing on behalf of the applicants of Special Criminal Application Nos.982 of 2007 and 983 of 2007 – original

accused Nos.2 and 3 has submitted that against the order passed by the learned Chief Metropolitan Magistrate refusing to grant the remand of the accused, the Criminal Revision Application under Section 397 of the Criminal Procedure Code before the learned Additional City Sessions Judge itself was not maintainable. He has relied upon the decision of the learned Single Judge of this Court rendered in Special Criminal Application No. 1697 of 2005. He has submitted that the learned Additional City Sessions Judge has relied upon the decision of another learned Single Judge of this Court rendered in Criminal Revision Application No. 836 of 2004 in which the another learned Single Judge has taken a view that against the order of granting of the remand of the accused, Criminal Revision Application under Section 397 of the Criminal Procedure Code is not maintainable as the same is a interlocutory order, however, so far as refusing to grant the remand is concerned, it is a final order

so far as State is concerned and therefore, Criminal Revision Application against the said order of refusal to grant the remand is maintainable under Section 397 of the Criminal Procedure Code. Therefore, it is submitted by Shri Nanavati, learned Senior Advocate that as there are two conflicting decisions of this Court, it is requested to refer the matter to the Division Bench. Shri Nanavati, learned Senior Advocate has relied upon the following decisions in support of his above submission and requested to refer the matter of the Division Bench. He has replied upon the decision of the Hon'ble Supreme Court in case of ***Madras Telephone S/C & S/T Social Welfare Assn. V/s. Anil Kumar And Another*** reported in **(2000) 2 SCC 215.**

12. Without prejudice to the aforesaid contentions and request to refer the matter to the Division Bench, Shri Nanavati, learned Senior Advocate has submitted that even

otherwise on merits also, the order refusing to grant the remand of an accused is required to be considered as interlocutory order so far as State is concerned also as both the orders i.e. granting application of remand and to reject the same, both are passed under Section 167 of the Criminal Procedure Code and that it cannot be that for one party it is a final order and for the other party it is an interlocutory order. He has relied upon the decision of the Hon'ble Supreme Court in case of ***Madhu Limaye V/s. The State of Maharastra*** reported in **(1977) 4 SCC 551,** more particularly, paragraph – 17 which is at Page 561.

13. Shri Nanavati, learned Senior Advocate appearing on behalf of the original accused has submitted that even on merits also, the learned Additional City Sessions Judge has committed an error in granting the remand to the accused No.3 for 2 days. It is submitted that the learned Additional City

Sessions Judge has committed an error in quashing and setting aside the order passed by the learned Chief Metropolitan Magistrate in exercise of the powers under Section 397 of the Criminal Procedure Code when the order passed by the learned Chief Metropolitan Magistrate was legal and proper, the learned Revisional Court ought not to have interfered with the same. It is submitted that even on the ground of parity the learned Additional City Sessions Judge ought to have imposed same conditions for accused Nos.2 and 3 i.e. to remain present before the Investigating Officer for interrogation from 9.00 AM to 6.00 PM. He has submitted that even the original accused No.3 against whom 2 days order of remand is passed is also ready and willing to appear and/or remain present before the Investigating Officer for interrogation from 9.00 AM to 6.00 PM like original accused No.2.

14. Shri Nanavati, learned Senior

Advocate has further submitted that even on merits also, there is no justification to ask for the remand of the accused No.3 for custodial interrogation and the police custody. It is submitted by him that on plain reading of the complaint, no case is made out for custodial interrogation / police custody and there are no cogent reasons or grounds for remand. It is submitted by him that the order passed by the learned Additional City Sessions Judge granting remand of the accused No.3 for 2 days is also contrary to the decision of the learned Single Judge of this Court reported in **2002 (1) GLR 215** and therefore, it is requested to allow Special Criminal Application No.982 of 2007. So far as Special Criminal Application No. 983 of 2007 filed by the original accused No.2 is concerned, he has submitted that he will not press for the same.

15. On the other hand, learned advocate appearing on behalf of the original

complainant as well as learned APP have vehemently submitted that the order passed by the learned Single Judge in Special Criminal Application No. 1697 of 2005 taking a view that the order passed by the learned Magistrate to grant the remand can also be said to be an interlocutory order and therefore, the Criminal Revision Application under Section 397 of the Criminal Procedure Code is not maintainable is per-incuriam as the learned Single Judge has not considered the binding decisions of this Court rendered in Criminal Revision Application No. 836 of 2004 and unreported decision of this Court in case of ***A. Majumdar V/s. State of Gujarat*** rendered in **Criminal Revision Application No. 429 of 2000** and in the case of ***Harish Dulabhai Patel V/s. State of Gujarat*** rendered in **Criminal Revision Application No.127 of 2001.** He has submitted that in all the aforesaid three decisions, the learned Single Judges of this Court have taken a view that against the order granting the remand

Criminal Revision Application at the instance of the accused under Section 397 of the Criminal Procedure Code is not maintainable as the same is a interlocutory order, however, so far as refusing to grant the remand of the accused is a final order so far as the State / Investigating Officer is concerned and therefore, against refusing to grant the remand Criminal Revision Application under Section 397 of the Criminal Procedure Code is maintainable. It is submitted that the learned Single Judge while delivering the decision in Special Criminal Application No. 1697 of 2005 has not considered the aforesaid three binding decisions and/or the said decisions were not brought to his attention and therefore, the decision in Special Criminal Application No. 1697 of 2005 is a decision per- incuriam and therefore, the matter is not required to be referred to the Division Bench. Learned advocate appearing on behalf of the complainant as well as the learned APP have

relied upon the following decisions of the Hon'ble Supreme Court as well as of this Court in support of their above submissions.

(1)***State of U.P. & Another V/s. Synthetics & Chemicals Ltd & Another*** reported in **1991 (4) SCC 139.**

(2)***State of A.P. & Others V/s. Raja Shri V.S.K. Krishna Yachandra Bahadur Varu Rajah of Venkatagiri & Others*** reported in **2002 (4) SCC 660.**

(3)***Her Highness Shantadevi Pratapsinh Rao Gaekwad V/s. Savjibhai H. Patel & Ors.*** reported in **1998 (2) GLR 1521.**

(4)***Jaisinh Jodhabhai Vaisya & Grofed Employees Union V/s. Laxmanbhai Arshibhai Zala*** reported in **2001(2) GLH 68.**

16. It is also further submitted on behalf of the complainant as well as the State that even the decision of the learned Single Judge rendered in Special Criminal

Application No. 1697 of 2005 taking contrary view is based on the concession given by the learned APP. It is submitted that disposal on the point of concession does not amount to declaration of law. They have relied upon the following decisions in support of their above submissions.

(1)***Director of Settlements, A.P. & Others V/s. M.R. Apparao & Another*** reported in **(2002) 4 SCC 638.**

***(2)Kulwant Kaur & Others V/s. Gurdial Singh Mann (Dead) By Lrs. & Others.*** ***r***eported in **(2001) 4 SCC 262.**

17. It is further submitted that even on merits also the judgment and order passed by the learned Additional City Sessions Judge in granting the remand of the accused No.3 for 2 days is not required to be interfered as the same is just and proper. It is submitted that it is for the Investigating Officer to consider how to investigate the case and if

during the course of the investigation, it is found that the custodial interrogation of a particular person / accused is required normally the same is to be granted. Shri Kodekar, learned APP has submitted that after the C.I.D. (Crime) has taken over the investigation, the Investigating Officer was of the opinion that for the purpose of further and complete investigation and for the investigation of the accused, the custody of the accused No.3 is necessary for ensuring continuity and speed in investigation and to secure the evidence, which may be useful at the trial or which might be useful to arrive at the truth and therefore, application was submitted for the police custody of the accused Nos.2 and 3 and when considering the seriousness of the offence, which has taken place in bright day light that too by 30 to 40 persons and the goods worth Rs. 44 Lacs were taken away and considering the overall facts and circumstances when the learned Additional City Sessions Judge has granted

the remand of the accused No.3 for 2 days, it cannot be said that there is any illegality committed by the learned Additional City Sessions Judge which requires interference of this Court exercising the powers under Article 227 of the Constitution of India.

18. It is further submitted that one M/s. Devanshi Enterprise (Dairy Den) is the tenant of Natraj Cinema since 1969 and was running an Ice Cream Parlour. There was a decree in its favour by the learned Small Causes Court at Ahmedabad in HRP Suit No. 2120 of 1990 and HRP Suit No. 336 of 1994. The owners of the Natraj Cinema wanted to sell the said property and therefore, the objections were invited and the said M/s. Devanshi Enterprise submitted its objections. The Natraj Cinema and original land owners jointly sold the property to one Pure Infrastructure and Parikh Real Estate And Leasing Private Limited on 11.5.2006 by registered sale deeds and in the said sale

deed it was categorically mentioned about the pending litigation with M/s. Devanshi Enterprise and while the partner of M/s. Devanshi Enterprise had gone to London as his mother was seriously ill on 4.10.2006, on 8.10.2006, the accused Nos.2 and 3 along with other co-accused and about 40 to 50 other people unauthorizedly entered into the property of Devanshi Enterprises situated at Natraj, illegally detained the security guard of Devanshi Enterprises Shri Bhavan Rabari on gun point by their people, detained the security guard for almost 4 to 5 hours at gun point, committed robbery of cash, machines, computers, etc., and demolished the same and therefore, it is submitted that the original accused Nos.2 and 3, more particularly, accused No.3 who was the most interest person in demolishing the construction and who was also personally present at the time when the said incident has taken place and to know whereabouts of the other co-accused and also to know who was the person behind the said

incident and where the goods have gone, a custodial interrogation of accused No.3 is required. It is submitted that therefore no illegality has been committed by the learned Additional City Sessions Judge in granting the remand of accused No.3 for 2 days and therefore, it is requested to dismiss both the Special Criminal Applications.

19. Shri Nayak, learned advocate appearing on behalf of the original complainant and the applicant of Special Criminal Application No. 974 of 2007 has submitted that even the learned Additional City Sessions Judge has committed an error in not granting the remand of the accused No.3 for 7 days and even the remand of the accused No.2 and therefore, it is requested to allow the Special Criminal Application No. 974 of 2007 and to direct the police custody of the accused No.3 for full 7 days.

20. Heard the learned advocates

appearing on behalf of the respective parties.

21. The investigation of the complaint was handed over to the C.I.D. (Crime) pursuant to the order passed by this Court passed in Special Criminal Application No. 236 of 2007. After the C.I.D. (Crime) started investigation and during the course of the said investigation, the C.I.D. (Crime) filed remand application on 5.4.2007 before the learned Chief Metropolitan Magistrate, Ahmedabad for remand of accused Nos. 2 and 3 for 7 days and prayed for custodial investigation of the said accused. The said application came to be rejected by the learned Chief Metropolitan Magistrate by its order dated 5.4.2007. Being aggrieved and dissatisfied with the order passed by the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad rejecting the application of the C.I.D. (Crime) for the remand of the accused Nos.2 and 3 for 7 days, the State

preferred Criminal Revision Application under Section 397 of the Criminal Procedure Code. At the time of hearing of the Criminal Revision Application a contention was raised that the Criminal Revision Application against the order of refusal to grant the remand is not maintainable, however, the learned Additional City Sessions Judge relied upon the decision of the learned Single Judge in case of ***Ghopalbhai Chaturbhai Amin V/s. State of Gujarat*** *reported in* ***(2005) 8 GHJ 419*** equivalent to **2004 GLHEL 203740** whereby, the learned Single Judge in the said decision has taken a view that against grant of remand a Criminal Revision Application under Section 397 of the Criminal Procedure Code at the instance of the accused is not maintainable as the same is a interlocutory order, however, the order refusing to grant remand is final order so far as State is concerned and therefore the Criminal Revision Application against the said order under Section 397 of the Criminal Procedure Code is

maintainable and relying upon the said decision the learned Additional City Sessions Judge entertained the said Criminal Revision Application. Shri Nanavati, learned Senior Advocate appearing for the original accused has relied upon the decision of the another learned Single Judge in case of ***Kapil Ashokkumar Jain V/s. State of Gujarat*** rendered in Special Criminal Application No. 1697 of 2005 whereby the learned Single Judge has set aside the order passed by the learned Sessions Judge entertaining the Criminal Revision Application against the order of learned Magistrate refusing to grant the remand by holding that the Criminal Revision Application against the said order was not maintainable as the same was an interlocutory order. Therefore, the contention on behalf of the petitioners – original accused is that as there are two conflicting decisions of this Court, the matter is to be referred to the Division Bench. It is submitted that in both the cases, the learned Single Judges have

relied upon the decision of the Hon'ble Supreme Court in case of ***State Represented by Inspector of Police & Others V/s. NMT Joy Immaculate*** reported in **(2004) 5 SCC 729** against which it is the contention on behalf of the respondents – original complainant as well as the State that the decision of the learned Single Judge in Special Criminal Application No. 1697 of 2005 is a decision per- incuriam and it was passed on the concession given by the learned APP and therefore, the matter is not required to be referred to the Division Bench. It is also the contention on behalf of the respondents that the learned Single Judge while deciding Special Criminal Application No. 1697 of 2005 has not considered the earlier three binding decision of this Court taking a contrary view that against the refusal to grant the remand, revision is maintainable as it is a final order. Now, therefore, first question which is required to be considered by this Court is as to whether the present case is required to

be referred to the Division Bench and/or the decision of the learned Single Judge of this Court in Special Criminal Application No. 1697 of 2005 is a decision per-incuriam.

22. Now, considering the decision of the learned Single Judge in Special Criminal Application No. 1697 of 2005, it appears to the Court that the decision of the learned Single Judge of this Court in case of **Gopalbhai Chaturbhai Amin** (supra) and other two binding decisions in case of **A. Majumdar** (supra) and **Harishbhai** (supra) were not brought to the notice of the learned Single Judge. In case of **Gopalbhai Chaturbhai Amin** (supra) relying upon the decision of the Hon'ble Supreme Court in case of **NMT Joy Immaculate** (supra) and discussing the law in detail on the point, the learned Single Judge has held that the when remand is rejected and the remand of the accused is not given to the police, it adversely affects the right of the prosecution of carrying out investigation and

therefore, the Criminal Revision Application preferred by the prosecution against the order passed by the learned JMFC, before the learned Sessions Court at Ahmedabad (Rural) was tenable under Section 397 of the Criminal Procedure Code. The relevant observation of the learned Single Judge of this Court in case of **Gopalbhai Chaturbhai Amin** (supra) reads as under :-

***" [IV] It also contended by the learned counsel for the applicant that the Revision Application preferred by the State before the Addl.Sessions Judge against the rejection of the remand application of the present applicant by the Judicial Magistrate, First Class, Ahmedabad (Rural) was not tenable at law and therefore also, the impugned order passed by the Addl.Sessions Judge deserves to be quashed and set aside.***

***The aforesaid contention raised by the learned counsel for the applicant is***

***not acceptable for the simple reason that law laid down by the Supreme Court in State & Anr. Vs. NMT Joy Immaculate, reported in (2004) 5 SCC 729, especially para 13 thereof reads as under;-***

***"13. Section 167 CrPC empowers a Judicial Magistrate to authorise the detention to an accused in the custody of police. Sec.209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognisance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of***

***the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision any manner. Therefore, applying the test laid down in Madhu Limaye Case it cannot be categorized even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High court, therefore, erred in entering the revision against the order dated 6/11/2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."***

***From the aforesaid paragraph it is clear that there is vast difference between the grant of remand and rejection of the remand. The whole decision of the Hon'ble Supreme Court reported in (2004) 5 SCC 729, was for grant of remand, which is held as an interlocutory order and not revisable. If the remand is***

***rejected and the remand of the accused is not given to the police, it adversely affects the right of the prosecution of carrying out investigation. Right to carry out investigation and by which method, is exclusive powers of the State. Custodial interrogation, is one of the well-known methods of investigation and therefore, when the remand is not granted, it affects vitally and adversely, the investigation but if the same is granted, then as per para 13 of the aforesaid judgement, even if the remand is granted, illegally, it does not affect finality of the case and therefore, grant of remand is interlocutory order, but converse is not true and therefore, revision application preferred by the prosecution against the order passed by the Judicial Magistrate, First Class, before the Sessions Court at Ahmedabad (Rural), was tenable at law under sec.397 of the Code of Criminal Procedure."***

23. In another decision the learned

Single Judge of this Court in case of ***A. Majumdar*** (supra) has also taken the similar view drawing distinction between the Criminal Revision Application against the order of granting of remand and Criminal Revision Application against the order of refusal of the remand. In the said decision it is also held that the order refusing to grant the remand of an accused on an application by the Investigating Agency is a final order so far as State is concerned as it adversely affects the rights of the Investigating Agency to investigate and have the custodial interrogation and therefore, the Criminal Revision Application against the said order under Section 397 of the Criminal Procedure Code is maintainable.

Relying upon the decision of the learned Single Judge rendered in Criminal Revision Application No. 429 of 2000 in case of ***A. Majumdar*** (supra), another learned Single Judge has also taken the same view in case of

***Harish Dulabhai Patel*** (supra). As stated hereinabove and considering the decision of the learned Single Judge in Special Criminal Application No. 1697 of 2005, it appears that the attention of the learned Single Judge was not drawn to the aforesaid three binding decisions. In the backdrop of the above facts it is required to be considered whether the decision of the learned Single Judge in Special Criminal Application No. 1697 of 2005 is per-incurium or not. In case of ***Mamleshwar Prasad & Another V/s. Kanahaiya Lal (Dead) through L.Rs.*** reported in **AIR 1975 SC 907** on the question of applicability of the judgment per-incurium in paragraph – 9 of the said judgment, the Hon'ble Supreme Court has observed as under:-

***"Shri Bindra, learned counsel has cited a few decisions before us to substantiate his submission that judgments per incuriam bind none except the particular parties to the lis. In this context, he has drawn our***

***attention to the observations in Young v. Bristol Aeroplane Co. Ltd., (1944) 1 KB 718 at p. 729 which has been approved by the House of Lords in Young v. Bristol Aero-plane Co. Ltd., 1946 AC 163 at p. 169 Similar statements are found in brief terms in the rulings reported as Nicholas v. Penny. (1950) 2 KB 466 and Bengal Immunity Co. Ltd. case, (1955) 2 SCR 603 = (AIR 1955 SC 661). We need not debate, in the present case, this fresh ground to under - mine otherwise conclusive judgments for other paramount rules governing justice administration prevail, as earlier indicated. But it is extremely significant that this facile theory was frowned upon by the House of Lords in Cassel and Co. Ltd. v Broome, (1972) 1 All ER 801 = (1972) 2 WLR 645. In that case the highest Court, viz., the House of Lords***

***"rejected in condemnatory terms the Court of Appeal's decision to the effect that the***

***decision of the House of Lords in Rookes v. Barnard (1964 AC 1129) on the issue of the exemplary damages had been reached per incuriam because of two previous decisions of the House. Lord Hailsham, L. C., in the course of the leading speech for the majority, asserted that 'it is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way'while Lord Reid took the view that it was 'obvious that the Court of Appeal failed to understand Lord Devlin's speech'. The per incurimn principle is of limited application. Very few decisions have subsequently been regarded as having been reached per incuriam and in Morelle v. Wakeling, (1955) 2 QB 379 a Master of the Rolls stated that such instances should be 'of the rarest occurrence', and should be limited to 'decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned'. Thus the doctrine will***

***not be extended to cases which were merely not fully argued or which appear to take a wrong view of the authorities or to misinterpret a statute.***"

Thus, considering the above decision of the Hon'ble Supreme Court and the observation, a decision given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned is a per-incuriam. Even the Division Bench of this Court has also held that a decision of the High Court without considering the Supreme Court's judgment is per-incuriam. In that case, a decision of the Hon'ble Supreme Court was not brought to the notice of the High Court and the High Court has taken a contrary view and the Division Bench in that case has held that the said contrary decision of the High Court cannot be treated as a binding decision because it has been rendered without noticing the said decision of the Hon'ble Supreme Court and

that could be a per-incuriam decision. So far as the decisions relied upon by the learned Counsel appearing on behalf of the applicants – original accused are concerned, there cannot be any dispute with regard to the proposition of law laid down by the Hon'ble Supreme Court, however, all the decisions are not applicable to the facts of the present case. As such, there is no conflict of decision as sought to be canvassed on behalf of the applicants. The binding decision of the learned Single Judge in case of ***Ghopalbhai Chaturbhai Amin*** (supra) and other two decisions of the learned Single Judges referred to hereinabove were not brought to the notice of the learned Single Judge at the time of deciding Special Criminal Application No. 1697 of 2005. If the above three decisions of this Court in ***A. Majumdar*** (supra), ***Harish Dulabhai Patel*** (supra) and ***Gopalbhai Chaturbhai Amin*** (supra) were brought to the notice of the learned Single Judge at the time of deciding the Special

Criminal Application No. 1697 of 2005, there would have remained no occasion for the learned Single Judge to take such a view, which has been taken in the said decision. It appears to the Court that the decision of the learned Single Judge in Special Criminal Application No. 1697 of 2005 is a decision per-incuriam as the three binding decisions of this Court taking a contrary view, were not brought to the notice of the learned Single Judge while delivering the decision of Special Criminal Application No. 1697 of 2005.

24. Even otherwise, considering the decision rendered in Special Criminal Application No. 1697 of 2005, it appears that the learned APP has without properly appreciating the distinction between the order of police remand and refusing to grant police remand and without properly appreciating the controversy in the case of **NMT Joy Immaculate** (supra) has conceded and

the learned Single Judge has proceeded further on that concession. Now, in view of the above concession, there was no specific lis that against the refusal of grant of remand whether the Criminal Revision Application is maintainable or not and / or whether the order of refusing to grant the remand would be a final order or not. All throughout, the learned Single Judge in Special Criminal Application No. 1697 of 2005 has observed that "the order of police remand being an interlocutory order." The learned Single Judge in the said decision has simply reproduced paragraph – 13 and without their being any further discussion set aside the order passed by the Revisional Court granting 24 hours police remand by holding that the Criminal Revision Application was not maintainable. On the other hand, now considering the contrary decision in case of ***A. Majumdar*** (supra) and ***Gopalbhai Chaturbhai Amin*** (supra), there is a lis between the parties and a specific contention was raised

and there is a discussion on the said point whether an order refusing to grant the remand would be a final order or not, so far as State is concerned and therefore, the Criminal Revision Application under Section 397 of the Criminal Procedure Code is maintainable or not. As held by the Hon'ble Supreme Court in catena of decisions, a decision on concession does not amount to declaration of law and is not a binding precedent. It is also required to be noted that the learned Single Judge while disposing of the Special Criminal Application No. 1697 of 2005 has relied upon paragraph – 13 of the decision of the Hon'ble Supreme Court in case of ***NMT JOY IMMACULATE*** (supra), however, it is to be noted that in the said paragraph and in the aforesaid decision, the Hon'ble Supreme Court was considering a case where the Criminal Revision Application was preferred by the accused against the order of granting remand of the accused and in context of the same, the Hon'ble Supreme Court has

made observation in paragraph — 13. Even otherwise, as stated above, there is no discussion and/or lis like in the aforesaid three contrary binding decisions i.e. whether an order refusing to grant remand is a final order or not and/or the same can be said to be an interlocutory order. Considering the above facts and circumstances, this Court is of the firm opinion that the matter is not required to be referred to the Division Bench as submitted on behalf of the learned Counsel appearing for the original accused as the decision in Special Criminal Application No. 1697 of 2005 is a decision per-incuriam without considering the three binding decisions of this Court taking a contrary view.

25. Shri Nanavati, learned Senior Advocate appearing for the applicants — original accused Nos. 2 and 3 has submitted that even otherwise on merits also the order refusing to grant remand of the accused is

also required to be considered as interlocutory order and therefore also, the Criminal Revision Application under Section 397 of the Criminal Procedure Code was not maintainable. It is submitted by him that to grant the application of remand or to reject the same both are passed under Section 167 of the Criminal Procedure Code and therefore, when both the orders are passed under Section 167 of the Criminal Procedure Code, it cannot be said that for one party it is a final order and for the other party, it is an interlocutory order. Therefore, it is the contention on behalf of the petitioners – original accused that even the order refusing to grant the remand of the accused on an application by the State is also to be treated as an interlocutory order. The above submission seems to be attractive but has no substance and is required to be rejected outright. What is required to be considered is not under which section the order is passed but what is required to be considered

is the nature of the order. For one party an order passed in a particular section may be an interlocutory order but for another party an order under the same section can be a final order and attains the finality. Therefore, the contention that when the orders are passed under the same section both are to be treated as interlocutory order, cannot be accepted. So far as order granting of remand of the accused is an interlocutory order and therefore, the Criminal Revision Application under Section 397 of the Criminal Procedure Code is not maintainable is already concluded by the Hon'ble Supreme Court in case of ***NMT JOY IMMACULATE*** (supra) and therefore, the same is not required to be considered by this Court, however, so far as the question whether an order refusing to grant the remand of the accused on application by the Investigating Agency is an interlocutory order and/or a final order is concerned, the said aspect has been considered in detail by the learned Single

Judge in case of ***A. Majumdar*** (supra) and ***Gopalbhai Chaturbhai Amin*** (supra). The learned Single Judge in the aforesaid decision drawn distinction between the order of grant of remand and an order refusing to grant the remand. It is held that if the remand is rejected and the remand of the accused is not given to the police, it adversely affects the rights of the prosecution to carry out investigation. It is also observed that right to carry out investigation and by which method is exclusively powers of the State and custodial interrogation is one of the well known methods of the investigation and therefore, when the remand is not granted, it affects vitally and aversely the investigation. In the case of ***A. Majumdar*** (supra), the learned Single Judge has observed and held as under :-

***"If an order refusing remand is passed it is certainly a final order against which***

***revision lies and such order cannot be termed as interlocutory order. For example, if the Investigating Agency makes a request that discovery of fact on the information of the accused in police custody is to be made such request, if refused, decides the rights of the prosecution or the investigation agency not only to collect a very material evidence u/s.27 of the Evidence Act, but also affects materially the right of the prosecution to produce material evidence which may have vital bearing on the decision of the case. In such cases it can certainly be said that while refusing to grant police remand the right of the prosecution are certainly finally determined to the limited extent for which police remand is refused and in such cases such order of refusal to grant police remand is certainly a final order against which revision lies. The matter can be illustrated further that if during investigation it comes to the notice of the investigating Agency that after commission***

***of murder the accused has burried the dead body of the deceased at a particular place and the police wants to recover the said dead body consequent upon the information given by the accused in police custody resulting into discovery of fact such would be a case of collection of evidence u/s. 27 of the Evidence Act which may have material bearing in a murder trial to connect that the murder was committed by the accused and he knew where after commission of murder he has concealed or burried the dead body. If on these facts police remand is refused certainly the right of the prosecution is taken away and to that extent it affects the right of the prosecution partly hence it decides a case partially against the prosecution. Consequently in such a case refusal of police remand is certainly revisable."***

26. Now, considering the above two decisions, it is specifically held by two learned Single Judges of this Court that the

order refusing to grant the remand is a final order and therefore, the same is revisable. These decisions are of co-ordinate bench and the same are binding to this Court. Even otherwise, on merits also this Court is also in complete agreement with the reasoning of the learned Single Judges in the aforesaid two decisions and the ultimate conclusion that the order refusing to grant the remand, it attains finality so far as investigation is concerned and therefore, it is a final order and the same is revisable. Under the circumstances, what is required to be considered is a nature of the order and not the order under which section it is passed. Under the circumstances, the contentions of the learned Senior Advocate appearing for the original accused that there cannot be that for one party it is a final order and for another party it is an interlocutory order and therefore, the order refusing to grant the remand is also to be treated as interlocutory order cannot be accepted.

27. Even otherwise, what would be the interlocutory order and what would be the final order came to be considered by the Honourable Supreme Court in case of ***Madhu Limaye V/s. The State of Maharashtra*** reported in **(1977) 4 SCC 551.** In para – 12 of the said judgment, the Honourable Supreme Court has observed as under :-

***"12. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606 :-***

***"..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in***

*relation to the particular purpose for which it is required." In para 1607 it is said:*

*"In general a judgment or order which determines the principle matter in question is termed "final"."*

*In para 1608 at pages 744 and 745 we find the words:*

*"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."*

In para — 13 of the said judgment, the Honourable Supreme Court has referred to the English decision in ***Salaman V/s. Warner*** reported in **(1891) 1 QB 734**, which reads as under **:-**

***"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."***

The Honourable Supreme Court in case of ***K.K.Patel & Another V/s. State of Gujarat & Another*** reported in **(2000) 6 SCC 195** has held after considering various decisions of the Honourable Supreme Court inclusive of the decision in case of **Madhu Limaye** *(supra)* that in deciding whether an order challenged is interlocutory or not, as per Section 397

(2) of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by the party, it would result in culminating the proceedings. Now, considering the ratio laid down by the Honourable Supreme Court in the aforesaid decision and the order refusing to grant the remand asked by the Police / Investigating Agency can be said to be a final order so far as the State is concerned. By not granting the remand / police custody, it will culminate the proceedings and the right available to the State for custodial interrogation, a recognized right, will be closed.

28. Now, having held the aforesaid two questions against the applicants – original accused, the question which is required to be considered is whether the learned Additional City Sessions Judge was justified in granting the remand of the accused No.3 for 2 days by

quashing and setting aside the order passed by the learned Chief Metropolitan Magistrate. The allegations in the complaint are already stated hereinabove and the main allegations are that the original accused Nos.1 to 9 inclusive of the applicants herein – original accused Nos.2 and 3 have come with about 30 to 40 persons, entered into the property of Devanshi and two persons have placed revolver on the forehead of the complainant and dragged him on the back side of the cinema and they told him that if he (complainant) makes a slightest voice, they would kill him. It is also further alleged that the accused started demolishing Ice Cream Parlour of the company and at that time the complainant informed the original accused No.3 – Amitbhai Gajjar requesting him to inform to the persons of the company, however, they told him to keep mum and did not allow to telephone and in the meantime, they demolished the structure and looted the mudamal worth Rs. 44 Lacs. As stated above,

the complainant originally filed the complaint in writing on 8.10.2006 at Navrangpura Police Station, however, though the Police Station officer accepted the same, did not take any cognizance and did not investigate the said complaint. Not only that even the FIR was also not registered and therefore, the original complainant submitted the private complaint before the learned Chief Metropolitan Magistrate on 17.10.2006 with regard to th above incident. It was also submitted in the said complaint that the accused along with 30 to 40 persons rushed at the Parlour; they arranged a pre planned conspiracy and by unlawful assembly looted the cash, machines, computers, etc; it was also further alleged that the accused are reach persons and have political influence. It was also requested in the said complaint to assign the complaint to the Crime Branch. That the learned Chief Metropolitan Magistrate, Court No. 13, Ahmedabad having noted that considering the complaint of the

complainant; the accused have committed a serious offence and they have violated the orders of the Civil Court and therefore, it is necessary to make investigation of the offence; the learned Chief Metropolitan Magistrate directed that the complaint be sent to the Police Inspector (Senior) Navrangpura Police Station for investigation under Section 156(3) of the Criminal Procedure Code and the Police Inspector (Senior) Navrangpura Police Station himself was directed to make an inquiry and submit the report to the Court. According to the complainant the accused were reach and influential persons and nothing happened and the proper investigation was not carried out by the Navrangpura Police Station and therefore, the original complainant preferred Special Criminal Application No. 299 of 2007 before this Court with a prayer to direct the State Government to hand over the investigation of M Case No. 1 of 2006 registered at Navrangpura Police Station to

the D.I.G., State of Gujarat or to the C.I.D. (Crime), State of Gujarat, to carry out investigation in connection with M Case No. 1 of 2006 registered with Navrangpura Police Station and shall submit the report within a period of 90 days. Accordingly, the investigation has been handed over to the C.I.D. (Crime), State of Gujarat. In the meantime and before the C.I.D. (Crime) took the investigation on hand, the Navrangpura Police Station submitted the report that the offence under Section 395 and 397 of the I.P.C. are not attracted and it was requested to delete the same. That thereafter the investigation was handed over to the C.I.D. (Crime) and the C.I.D. (Crime) started investigation. The original accused submitted an application for anticipatory bail before this Court and the learned Single Judge of this Court granted anticipatory bail to the accused by order dated 8.3.2007 with a liberty to the Investigating Officer that it will be open to the Investigating Officer to

file an application for remand, if he consider it proper and just and the concerned learned Magistrate would decide it on merits. After the investigation was taken over by the C.I.D. (Crime), it appears from the police papers that the Investigating Officer of C.I.D. (Crime) did not agree with the report submitted by the Police Inspector, Navrangpura Police Station to delete the offence under Sections 395 and 397 of the IPC and the Investigating Officer of the C.I.D. (Crime) was of the opinion that for the reasons stated in the application and for the purpose of further and complete investigation and interrogation of the accused Nos.2 and 3, the police custody of the accused is necessary to ensure continuity and speed in investigation and to secure the evidence, which may be useful at the trial or which might be useful to arrive at the truth, submitted application before the learned Chief Metropolitan Magistrate requesting for police custody / remand of accused Nos.2 and

3 for 7 days and to have the custodial interrogation of accused Nos.2 and 3. The learned Chief Metropolitan Magistrate rejected the said application considering the fact that the police itself have submitted the report that the offence under Sections 395 and 397 of the IPC is not attracted and that the custodial interrogation of the accused Nos. 2 and 3 is not warranted on the facts and circumstances of the case. However, the learned Chief Metropolitan Magistrate passed an order that for the purpose of investigation and getting the information which the Investigating Officer wants to get, the said purpose can be achieved by interrogating the accused by directing the accused to remain present for interrogation before the Investigating Officer and accordingly, passed an order directing the original accused Nos. 2 and 3 to remain present before the Investigating Officer at 5.30 PM for 3 days upto 7.4.2007.

29. Thus, what has weighed with the learned Magistrate was that the Investigating Officer himself has reported that the offence under Sections 395 and 397 are not made out. However, the learned Chief Metropolitan Magistrate has failed to consider the fact that the Investigating Officer who had submitted the report that offence under Section 395 and 397 is not made out and is to be deleted was Investigating Officer of Navrangpura Police Station and other than the Investigating Officer of C.I.D. (Crime) who has submitted an application for remand of the accused. It is required to be noted that right from the beginning the allegations were made against the Police Inspector, Navrangpura Police Station that as the original accused are very rich and influential, the investigation is not carried out properly and which led to the original complainant to prefer Special Criminal Application before this Court for transferring the investigation from Police

Inspector, Navrangpura Police Station to the C.I.D. (Crime) and that prayer came to be granted by this court and the investigation was handed over to the C.I.D. (Crime) and having not agreed with the report of the earlier Investigating Officer with regard to the deletion of Sections 395 and 397 of the IPC and not agreeing with the opinion of the earlier Investigating Officer that no case under Section 395 and 397 is made out, the subsequent Investigating Officer of C.I.D. (Crime) submitted an application for remand. Thus, the learned Chief Metropolitan Magistrate committed an error in considering the fact that the Investigating Officer has submitted the report that no case under Sections 395 and 397 is made out. Considering the above, the learned Revisional Court interfered with the order passed by the learned Chief Metropolitan Magistrate and partly allowed the Criminal Revision Application granting the remand of 2 days of the accused No.3

30. Now, looking to the application for remand of the accused submitted by the Investigating Officer, C.I.D. (Crime), Ahmedabad it is stated in the said application that the allegations against the accused are that the disputes with regard to the tenancy rights of the owner of the Dairy Den who was occupying some place in Natraj Cinema were pending before the competent Civil Court and there was an injunction in favour of the tenant and subsequently the entire property came to be purchased by one Pure Infrastructure and Parikh Real Estate & Leasing Private Limited. That the new owner decided to disconnect the water supply and other connection, which led to the filing of the Civil Application by the tenant and owner of the Dairy Den. That on 3.10.2006, the mother of the owner of the Dairy Den – Harish Shah fell seriously ill and therefore, he immediately left for London and he reached at London on 5.10.2006. That when he was at

London on 8.10.2006, mob of about 40 to 50 persons consisting of the accused persons came on the Dairy Den Parlour and took watchman – Bhavan Rabari – complainant at the gun point and looted the cash, machines, computers, etc., worth Rs. 44 Lacs and demolished the property. In the application for remand, it is submitted that the mudamal machines and other things are to be recovered. The vehicle in which the accused took away the mudamal is yet to be traced and the owner of the said vehicle is to be further inquired into. It is also to be inquired and investigated as to where other goods are kept. It is also further submitted in the application that some of the accused are arrested and some of them are absconding (yet to be arrested) and their whereabouts are to be find out. It is also further submitted that it is also to be investigated as to who is the main culprit and at whose instance the offence has been committed and the building is demolished and the mudamal

machines and goods have been stolen / looted. In the said application, it is also submitted that it is yet to be inquired and investigated as to who were the other persons involved in committing the said offence and after the aforesaid incident where those accused had taken shelter after committing the offence is yet to be investigated. It is submitted that the original accused No.3 – Amitkumar Gajjar was the person who was present at the time of the incident and commission of the offence and for the aforesaid reasons and for proper inquiry and investigation, the custodial interrogation of the said Amitkumar Gajjar is required. It is not in dispute that Section 167 of the Criminal Procedure Code empowers the Magistrate to authorize the detention of the accused in the custody of the police and Section 209 of the Criminal Procedure Code confers powers upon the Magistrate to remand and accused to custody until case has been committed to the Court of Sessions and also

until the conclusion of the trial. Section 309 of the Criminal Procedure Code confers powers upon the Court to remand the accused to custody after taking an evidence or during commencement of the trial and when if it finds necessary, to adjourn the inquiry or trial. The Code confers a statutory right upon the police to investigate into the cognizable offence and the Code authorizes the arrest and detention in custody of the offender for the first 24 hours without interposition of the Magistracy and further police custody upto a period of 15 days with the authority of the Magistrate. Thus, the arrest and interrogation in the police custody for cognizable offence is not only a visualize but expressly authorized by the Court.

31. It is also to be noted that custodial interrogation is qualitatively more elicitation – oriented than questioning a suspect who is in Judicial custody or on

bail. A custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected. Very often interrogation in such a condition would reduce to a mere ritual. The gravity of the offence is an important factor to be taken into consideration while considering the need for custodial interrogation. Now, therefore, when the Code authorizes the police to have custodial interrogation for the purpose of further and complete investigation and the interrogation of the accused is required to ensure continuity and speed in trial and to secure the evidence which may be useful at the trial or which might be useful to arrive at the truth, the police remand is to be granted ordinarily unless any malafides are alleged. Normally it would be a subjective satisfaction of the concerned Investigating

Officer for police remand or custodial interrogation looking to the gravity of the offence and to find out the truth and to get some evidence. Under the circumstances, normally the Courts are not required to interfere with the such orders.

32. Even otherwise, as observed by the Honourable Supreme Court in case of ***NMT Joy Immaculate*** (supra), the order of rmand has no bearing on the proceedings of the trial itself nor can it has an effect on the ultimate decision of the case and the purpose for police remand is for speedy and effective investigation to find out the truth, which is a concern of the police and therefore also, normally the Court's should not interfere with such orders.

33. As stated above and for the reasons stated in the application for remand, which are reproduced hereinabove and looking to the gravity of the offence when the Investigating

Officer of the C.I.D. (Crime) has prayed for the remand of the accused and requested for custodial interrogation and when the remand of the accused No.3 is granted for 2 days by the learned Additional City Sessions Judge, it cannot be said that the learned Additional City Sessions Judge has committed any error and/or illegality in passing the said order, which calls for the interference of this Court in exercise of he powers under Article 227 of the Constitution of India. The learned Additional City Sessions Judge has also given cogent reasons to interfere with the order passed by the learned Chief Metropolitan Magistrate refusing to grant the remand.

34. Now, so far as the submissions on behalf of the original accused No. 3 that he has no objection, if a similar order is passed like the order passed in favour of the original accused No.2 to the effect that he will appear before the Investigating Officer between 9.00 AM to 6.00 PM is concerned, it

is to be noted and as observed hereinabove, custodial interrogation is qualitatively more elicitation – oriented than questioning a suspect who is well ensconced with a favourable order of anticipatory bail / bail. The continuous custodial interrogation would be more effective and advantageous in disinterring many useful informations and also materials which would have been concealed. Therefore, the request of the original accused No.3 cannot be accepted. As stated above, it is ultimately for the concerned Investigating Officer to pray for the custodial interrogation and/or police custody for the reasons mentioned in the application for remand.

35. Now, considering the reasons praying for a remand mentioned in the application for remand, it cannot be said that there are justifiable reasons for the Investigating Officer to pray for custodial interrogation / police custody. This Court has also

considered the police papers and the statement of the complainant as well as the further statement of the complainant recorded by the C.I.D. (Crime) and considering the same as well as the gravity of the offence and to find out the truth and to secure the evidence, which may be useful at the time of trial or which might be useful to arrive at the truth, prayer for custodial interrogation / police custody is justifiable. That considering the nature and gravity of the offence as alleged and particular facts and circumstances apparent from the police papers and the role attributed to the original accused No.3 – applicant herein and the role played by the original accused No.3, I hold that the learned Additional City Sessions Judge is justified in granting remand for custodial interrogation. It is to be noted that in fact, the Investigating Officer prayed for 7 days police remand, however, the learned Additional City Sessions Judge has thought it fit to grant the remand for 2 days

only. This shows the application of mind by the learned Additional City Sessions Judge. Under the circumstances, it cannot be said that the judgment and order passed by the learned Additional City Sessions Judge is so perverse, which calls for the interference of this Court in exercise of the powers under Article 227 of the Constitution of India. There is no jurisdictional error much less an error of law committed by the learned Revisional Court. Under the circumstances, the application submitted by the original accused No.3 challenging the judgment and order passed by the learned Additional City Sessions Judge granting 2 days remand requires to be dismissed as no interference of this Court is warranted.

36. Now, this takes me to the application submitted by the original complainant challenging the judgment and order passed by the learned Revisional Court granting police remand of only 2 days and not

granting the remand for 7 days. It is to be noted that the Investigating Officer / State has not challenged the order passed by the learned Revisional Court granting only 2 days remand and it appears that the Investigating Officer / State is satisfied with the same. As stated above, it is for the Investigating Officer to consider for how many days the police remand is required and none else can say for how many days the police remand is required. Under the circumstances, complainant has no locus to submit for how many days the police remand should be granted. It is the subjective satisfaction of the Investigating Officer to pray for the remand looking to the gravity of the offence and other relevant circumstances and the reasons for the police remand. Under the circumstances, the application at the instance of the complainant requesting for the police remand of more than 2 days is not maintainable, more particularly, when the Investigating Officer has not made any

grievance against the order of granting remand of only 2 days. Under the circumstances, the Special Criminal Application filed by the complainant deserves to be dismissed.

37. For the reasons stated above, Special Criminal Application No.982 of 2007 is dismissed. Special Criminal Application No. 983 of 2007 is dismissed as not pressed. Special Criminal Application No. 974 of 2007 filed by the original complainant is also dismissed. In view of the disposal of the Special Criminal Application Nos.982 of 2007 and 983 of 2007, no orders in Criminal Misc. Application Nos. 6842 of 2007 and 6846 of 2007. As even otherwise, the learned Advocate appearing for the original complainant is already heard and for which even the learned Counsel appearing on behalf of the original accused No.3 i.e. applicants of Special Criminal Application No.982 of 2007 has not raised any object. Rule is discharged in each

of the matters. Ad-interim relief, granted earlier, stands vacated forthwith.

[ M.R.Shah, J.]

**FURTHER ORDER**

At this stage, Shri N.D.Nanavati, learned Senior Advocate appearing for the applicant of Special Criminal Application No. 982 of 2007 has requested to continue ad-interim relief granted earlier so as to enable the applicant to challenge this order before the Higher Forum. It is to be noted that the incident has taken place in the year 2005 and still the investigation is not concluded and any further delay would further prejudice the investigation, however, in the facts and circumstances of the case, more particularly, when the ad-interim relief was already granted earlier and to enable the applicant to challenge this order before the

Higher Forum, ad-interim relief, granted earlier is directed to be continued till 3rd August, 2007.

[ M.R.Shah, J.]

kdc